BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE.

Dated 24th of November 1970.

PRESENT

Shri S. T. Kulkarni, B A., (Hons), LL.B. .....*Presiding Officer*,
Complaint No. 18 of 1969

in A. I. D. No. 32/67

Sri C. Basappa, Son of Channaveerappa, Aralakuppa Post, Pandavapura Taluk ... *Complainant*

Vs.

The Management of Pandavapura Sahakara Sakkare Karkhane, Ltd., Pandavapura ... ... *Opposite Party*

Appearances:

Sri N. L. Nagappa, Secretary, P.S.S.K. Employees, Association, Mandya, appeared in the beginning and subsequently, he was permitted to retire ... *For the Complainant*

Sri M. A. Mitra, Managing Director, P.S.S.K Ltd., Pandapura *For the Opposite Party*

AWARD

This is a complaint filed by the Complainant under Sections 33 and 33A of the Industrial Disputes Act for setting aside the order dated 15th November 1969 passed by the Opposite Party Management against him treating him as a deserter with effect from 30th October 1969, and for reinstating him in his original post with full wages with retrospective effect and continuity of service, and for costs etc., as deemed fit and proper by the Tribunal.

1. The complainant alleges that he was working as a shift Store Issuer in the Opposite Party Sugar Factory, and he had applied for leave from 30th October 1969 to 10th November 1969 as he was suffering from Typhoid, and he had also sent a medical certificate on 11th November 1969 regarding his illness. He further alleges that on 14th November 1969, he sent a second leave letter for extension of leave up to 16th November 1969, and at the time

when he went to the Factory on 17th November 1969, to attend duty, the Time Keeper who was on duty refused to allow him for duty stating that he must obtain permission from the Managing Director for that purpose, and when he applied to the Managing Director in that behalf, it was of no avail. He also alleges that on 22nd Novemer 1969, he received a registered letter from the Opposite Party in which it had been stated that he had been treated as a deserter with effect from 30th October 1969, and the action taken by the Management in this behalf was illegal and arbitrary, and hence he had to file this complaint petition for the reliefs mentioned in para 1 above.

2. The Opposite Party Management has put in its objections to the effect that the complainant was a seasonal employee, and he had absented himself from duty from 30th October 1969 onwards without applying for leave, and he did not send any leave application thereafter, and hence he was treated as having lost lien on his appointment as per Standing Order No. 14 (3), and accordingly, a Memo dated 15th November 1969 was issued to him. It further contends that though he (complainant) had sent a medical certificate on 12th November 1969, no leave report had been received from him, and it was false to say that he had sent a leave letter requesting for leave from 30th October 1969, to 10th November 1969 and it was only on 17th November 1969 that he gave a representation requesting for permission to attend to his duties, and the same could not be granted as he had already lost his lien on appointment as per Standing Order No. 14 3). It lastly contends that the provisions of Section 33 of the Industrial Disputes Act had not at all been contravened, as this was not a case of termination by way of discharge or dismissal as a punishment during the pendency of an industrial dispute, and hence the complaint was not legally tenable and was liable to be dismissed.

3 After the Opposite Party put in its objection statement, the Complainant filed his reply on 22nd January 1970 denying all the contentions raised in the objection statement, and further reiterating the allegations made in the complaint petition.

4. In view of the contentions raised on behalf of both the parties, the following issues were raised on 20th April 1970 and set down for hearing:—

"1. Whether the Complainant proves that he sent a leave application on 30th October 1969 as alleged ?

2. Whether the Complainant has incurred disability under Standing Order 14 (3) ?

3. What Award ?

5. My findings about these Issues are:—

(1) No.

(2) Yes.

(3) As per order below.

Reasons.

6. In this case the Complainant Sri C. Basappa was examined partly on 23rd May 1970 and the documents at Exhibits. C 1 to C 4 and Exhibits 01 to 06 also were got marked, and the case was adjourned for further hearing for want of time to 17th June 1970. Thereafter the case was adjourned to 29th June 1970 and then to 13th July 1970 for one reason or the other, and on the latter date Sri N. L. Nagappa, the representative of the Complainant filed a Memo to the effect that the Complainant had not come and contacted him in spite of a registered letter sent to him, and hence he may be permitted to retire, and accordingly leave prayed for by him was granted. Thereafter the Complainant did not at all appear before this Tribunal and take part in the further hearing of the case even though notices were sent and served on him on 2 or 3 occasions. This would clearly go to show that the Complainant is not at all interested in the further prosecution of the case. So for as his evidence, which was partly recorded on 23rd May 1970, and also the documents at C 1 to C 4 got marked on his behalf on that date, are concerned, they cannot be given much weight and importance, as the Opposite Party was not given an opportunity of cross-examining him at full length, by his being made available for that purpose on the next dates. Under these circumstance, it will have to be taken that there is absolutely no evidence on behalf of the Complainant in support of his contentions.

7. So far as the Opposite Party is concerned, it has examined two witnesses Sri N. K. Lingegowda (OW-1) and Sri Syed Ahamed Pasha (OW-2) on its behalf, and it has also got the documents at Exhibits 01 to 011 marked. Their evidence would go to show that the Complainant had remained absent

from duty unauthorisedly from 30th October 1969 to 7th November 1969, and hence he was treated as having lost his lien on appointment as per the Complaint Ext. 07 given by OW-1, and the memo dated 15th November 1969 was issued to him in that behalf as per the Office copy at Ext. 04 (original at Ext. C4). It is further seen from their evidence that the Complainant had not at all sent any leave letter praying for leave from 30th October 1969 to 10th November 1969 as alleged by him. It is also seen from their evidence that excepting the medical certificate Ext. 02 no leave application was received by the Opposite Party from the complainant for the above said period. In the absence of the leave application it would not be possible for the Management to grant leave merely on the strength of the medical certificate which was received long after the date 7th November 1969 on which he lost the lien on his appointment as per Standing Order No. 14 (3) of the Opposite Party Management. Moreover, the evidence given by OWs-1 and 2 is not challenged by the Complainant by cross examining them, as a result of his absence in the Tribunal on the date on which they were examined. Taking all these factors into account, my conclusion is that there is practically no evidence on behalf of the Complainant in support of his contentions, while the evidence led on behalf of the Opposite Party shows that he (Complainant) has lost his lien on his appointment as a result of his unauthorised absence for a period of more than 8 days, and a memo in that behalf as per Ext. C 4 has been issued to him by the Opposite Party Management.

8. Lastly, I come to the question whether the present complaint would be tenable under Sec. 33 (1) and 33 A of the Industrial Disputes Act. It has been held by the Supreme Court in 1967 (II) L. L. J. P. 883 (National Engineering Industries *vs.* Hanuman) that in a case in which the Standing Orders of the company provide that a workman would lose his lien on oppointment in case he does not join his duty within a certain time after the expiry of leave, it would mean that his service stands automatically terminated when that contingency happens, and that such a case would not at all fall within the purview of Section. 33 or 33-A of the I.D. Act. This Ruling has been followed by the Patna High Court in the decision reported in 1969 (I) L.L.J. p. 133 (Pure Kustore Colliery *vs.* Khan Mazdoor Congress), in which also a similar question was involved. The wording of Standing Order No. 14(3) of the Opposite Party

Management is almost similar to the Standing Orders concerned in two Rulings mentioned above. As this would be a case of automatic termination of service in pursuance of the said Standing Order, this cannot at all be said to be a case of discharge or dismissal from service by way of punishment, and as such this case would not fall within the purview of Sec. 33 or sec 33 A of the I.D. Act. Consequently thepresent complaint would not be tenable under that section.

9. In view of the above discussion, my conclusion is that the complainant has not been able to prove that he had sent the leave application on 30th October 1969 to the Oppoait Party Management, and that the Complainant had incurred disability by forfeiting his lien on appointment under Standing Order No. 14(3), and hence I answer Issue No 1 in the negative and Issue No. 2 in the affirmative. In view of these findings this complaint shall have to he dismissed, and the Complainant would not be entitled to any of the reliefs sought by him. Hence I pass the following Award:—

AWARD.

The Complaint is dismissed. No order as to costs.

S. T. KULKARNI,
Presiding Officer,
Additional Industrial Tribunal,
Bangalore.

24-11-70